

Executive Registry
76-2108/3

OLC 76-1611
7 June 1976

WDC/Knoche
10 May 76

MEMORANDUM FOR: Mr. E. H. Knoche

FROM

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STATINTL

SUBJECT : Confirmation Hearing

1. Ann Karalekas, a staff member of the Senate Select Committee on Intelligence, called. She is doing a background paper for the Committee on your nomination. She indicated that the Committee will meet to consider the nomination sometime next week but that your appearance will probably not take place until the following week.

2. She said she wanted to be back in touch with me if she ran into other problems and I said for our part we would certainly like to know the lines of inquiry being developed in order to assure that we could adequately prepare.

3. Her three specific questions were:

a. Who is sponsoring the Second Deputy Legislation? I explained that this is an Administration proposal and that it is now in OMB for coordination prior to transmittal to the Congress.

b. Who nominated you? I said of course the nomination was by the President, but that you were also the Director's personal choice.

c. What role will you assume in congressional briefings since as the official responsible for internal administration of the Agency you would possess the necessary background and detail? I said that I would like to

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consult with you further on this point, but for instance, on the budget briefings, it may be logical for you to make the detailed presentation. In previous hearings, the DCI had made the overview presentation for the Intelligence Community and the detailed presentation for the Agency, and the individual elements of the Intelligence Community made their detailed presentation. The Director, as statutory head of the Central Intelligence Agency and not of the elements of the Intelligence Community, creates a legal difference but I was not sure that it would be a difference in practice.

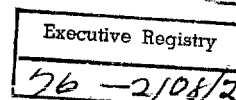
4. It may be helpful on this point if we supply Ms. Karalekas with a wrapup of your role vis-a-vis the Committee as this obviously will be a matter of prime interest to the membership. At a minimum I suggest we might consider sending her a copy of your proposed prepared remarks.



Deputy Legislative Counsel

STATINTL

10 May 1976



*P.O.
Knoche*

NOTE FOR OLC

George:

That was a mighty fine job done on the Q's and A's for my confirmation hearing. Many thanks to all involved, particularly to who I understand played a primary role in getting the paper done.

STATINTL



E. H. Knoche

STATINTL

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POSSIBLE QUESTIONS TO BE ASKED MR. KNOCHE DURING
SENATE ARMED SERVICES CONFIRMATION HEARINGS

PERSONAL

1. What are your qualifications for DDCI?
2. How long do you plan to serve as DDCI if you are confirmed?
3. Do you see any potential conflict of interest in your serving as DDCI and your holding any of your present financial interests?
4. If requested by this Committee, on the basis of conflict of interest, will you divest yourself of any assets?

ROLE AND ORGANIZATION OF CIA AND IC

5. What is the proper role of a secret intelligence organization in an open society?
6. Based on your CIA experience, what is the proper role of CIA in the U.S. Government?
7. What relative roles should civilians and the military have in producing intelligence?
8. Should there be more than one statutory deputy to the DCI? What should their respective roles be? Who should act for the DCI in his absence? What should be the civilian-military make-up of the DCI and his principal deputies?
9. What changes need to be made in the National Security Act of 1947?
10. What are the strengths and weaknesses of E.O. 11905? What role does it create, beyond the National Security Act, for the DDCI?
11. What is the proper distribution of resources within CIA for collection vs. production? For overt vs. clandestine collection? For scientific vs. human collection?
12. What suggestions do you have for improving the various aspects of CIA's performance?
13. What is your management philosophy? How do CIA's unique responsibilities and requirements affect this philosophy?

14. The analytical capabilities of the CIA have come under attack during the congressional investigations. Do you think they need improving, and if so, how do you believe this might be accomplished?

15. Is stronger management of the intelligence community as a whole necessary?

16. What is your position on past Agency practices such as assassination plots, mail intercept programs, and drug testing on unsuspecting humans?

17. Is the internal structure of the CIA sufficient for the challenges of 1976? Would you recommend any changes?

18. Why do CIA employees deserve their own separate retirement system?

CONGRESSIONAL RELATIONSHIP WITH CIA

19. What is your view of the degree to which Congress should oversee intelligence activities?

20. Do you have a view on the current debate in the Senate on the establishment of a new oversight committee?

21. Do you feel congressional oversight of CIA has been effective?

22. What is your attitude toward furnishing substantive information to Congress?

23. Have you read the recommendations and report of the Church Committee? What comments do you have on their report?

COVERT ACTION

24. Do you feel the CIA should maintain a capability for covert action? How often should it be used? What would be your test for when a covert operation should be undertaken? What role should Congress play in covert action? Do you recommend changes in Section 662 of the Foreign Assistance Act?

SECRECY

25. Do you feel CIA classifies more information than needs to be classified? If so, what can be done to reduce the amount of information classified?

26. Do you feel intelligence budget totals need to remain secret?

27. Should Government classification of information be governed by statute or Executive order? Why?

28. Are CIA personnel overseas adequately protected? If not, what can be done by the Executive branch to improve this situation? Do you support bills which have been introduced to provide criminal penalties for disclosure of information leading to the identification of CIA employees under cover?

29. Are better laws necessary to protect intelligence secrets?

ABUSES

30. Do you see any danger that the abuses by CIA in the past might be repeated? What can be done to insure that the efforts of CIA are never again directed at U.S. citizens?

31. Do you know of any examples where intelligence estimates were tailored or slanted so that they supported particular policy options? Would you say that it is essential that this never be permitted to happen? What has been and can be done to insure that it is not?

32. What would you do if higher authorities insisted that you order the Agency to undertake an improper act?

33. What is the state of CIA morale?

POSSIBLE RESPONSES TO CERTAIN QUESTIONS LIKELY TO BE
ASKED MR. KNOCHE DURING HIS CONFIRMATION HEARINGS

5. What is the proper role of a secret intelligence organization in an open society?

Organizations which must operate in secret certainly contravene the spirit of an open society, yet it is an inconsistency which nearly all Americans recognize as essential. The remedy to the inconsistency is to insure that intelligence agencies are accountable to the established institutions of Government. The agencies must act strictly within their charters, and cannot operate so as to abridge or in any way infringe on the constitutional rights of Americans.

6. Based on your CIA experience, what is the proper role of CIA in the U.S. Government?

CIA's role in the U.S. Government is specified in the National Security Act of 1947. CIA is to serve as the focal point in Government where intelligence from all producing agencies would be correlated, evaluated, and disseminated to the upper echelons of Government to aid in the formulation of national security policies. This centralization would assure that all information vital to the formulation of such policies was provided. Further, CIA was to perform services of common concern for all intelligence agencies, and, under the direction of the President and the National Security Council, perform other duties related to intelligence as deemed necessary in the national interest.

The objective of the Agency is to provide the very best possible intelligence to Government policy makers. CIA must remain free from any considerations which could result in biased intelligence reporting.

7. What relative roles should civilians and the military have in producing intelligence?

Both civilians and the military have important roles in the intelligence process. Generally speaking, the military has special intelligence requirements which are related to its combat mission. This means that the military must have its own intelligence capability with respect to both collection and analysis of information. Military intelligence, therefore, can be viewed as supplementing the more broad and strategic efforts of the civilian agencies. Civilians and the military have relatively independent roles in the field though there is coordination as appropriate to avoid duplication and assure full coverage. The coordination in the production process allows the civilian agencies to take exception to conclusions by the military in national estimates and the military can take similar exceptions to conclusions made by the civilian agencies. This process allows the policy makers to make their decisions based on national estimates which fully cover all sides of the issues involved. It is the best assurance that estimates are not slanted or biased either in favor of the military or the civilian agencies. The CIA is institutionally insulated from such bias because it has no policy role.

8. Should there be more than one statutory deputy to the DCI? What should their respective roles be? Who should act for the DCI in his absence? What should be the civilian-military make-up of the DCI and his principal deputies?

Yes. I think there should be two statutory deputies. As you know, the DCI wears two hats. He is the executive head of the CIA, and, as the principal foreign intelligence officer of the Government, he also has certain general administrative responsibilities with respect to the entire Intelligence Community. The Director's duties in administering the Intelligence Community, handling relations with other components of the Government, and passing on broad questions of policy leave him little time for day-to-day supervision of the Agency. I think the Director needs a deputy to assist him in each of his two roles. This was one of the recommendations of the Rockefeller Commission Report. The two deputies concept is also reflected in the recently issued Executive Order 11905, which directs the DCI to delegate the day-to-day operation of the CIA to the Deputy Director and which creates the position of "Deputy to the Director of Central Intelligence for the Intelligence Community" to assist the DCI in his supervision of the Intelligence Community. I think this latter administratively-created position should be upgraded to a statutory one, because I think it is important that both deputies be politically responsible officials--appointed by the President and confirmed by the Senate.

As to who should act for the DCI in his absence, I think that generally the Deputy for the Agency would continue handling Agency matters and the Deputy for the Intelligence Community could deal with Community matters. Responsibility in a few "gray" areas could be apportioned by internal directive.

Finally, I think the question of the civilian-military make-up is largely a policy question for Congress to decide, although I think that it would be generally appropriate for a military man to assist the DCI in Community matters while continuing the present arrangement of having at least one civilian in the two top Agency positions.

9. What changes need to be made in the National Security Act of 1947?

The CIA and intelligence community have somewhat outgrown the National Security Act. I believe the Act should be amended to reflect the DCI's dominant role for the intelligence community as a whole. Additionally, the prohibitions on CIA are worded in very broad and vague terms; some of these can be inconsistent with the positive responsibilities levied by the Act, such as the DCI's responsibility to protect intelligence sources and methods. I believe these inconsistencies should be clarified. I believe Senator Stennis' bill, introduced in the 93rd Congress, does this to a great extent.

10. What are the strengths and weaknesses of E. O. 11905? What role does it create, beyond the National Security Act, for the DDCI?

I think it is too early to detect weaknesses in the Order. Certainly none have surfaced yet. On the other hand, its strengths are obvious. For the first time, the respective authorities and responsibilities of the various intelligence agencies and departments have been delineated and clarified; provision has been made for strong central supervision and direction of intelligence activities by the DCI; strong internal and external oversight mechanisms have been established to assure that intelligence activities are proper and lawful; and detailed restrictions on intelligence activities have been spelled out in order to safeguard the civil liberties of the American people.

The Director's duties in administering the intelligence community, handling relations with other components of the Government, and passing on broad questions of policy leave him little time for day-to-day supervision of the Agency. Therefore, Executive Order 11905 directs the DCI to delegate the day-to-day operation of the CIA to the Deputy Director for Central Intelligence.

11. What is the proper distribution of resources within CIA for collection vs. production? For overt vs. clandestine collection? For scientific vs. human collection?

All collection and production must of course be focused to meet specific requirements and priorities. The resources involved must be carefully and judiciously allocated and utilized to assure that these requirements and priorities are fully met. Collection must be tied to definite requirements and not be collection for the sake of collection. This requires a continual reevaluation and re-tailoring of the assets involved. There must also be a built-in flexibility to allow the shifting of certain of these assets to meet emergency situations without adversely affecting ongoing programs.

Recognizing the considerable efforts required in the collection of information by clandestine assets, there are considerable resources allocated to the continual review and compilation of all available overt materials and sources of possible interest. Clandestine collection is developed and maintained as a position capability to collect information not otherwise available.

Ongoing scientific collection programs provide needed information, particularly concerning those geographic areas to which access is restricted or denied. Human sources supplement technical information collected and carry out intelligence assignments beyond the capability of the technical collection efforts.

15. Is stronger management of the intelligence community as a whole necessary?

Stronger management of the intelligence community as a whole was lacking. This was a major factor prompting the issuance of E. O. 11905. I believe this Order, through its creation of a strong community role for the DCI, and the creation of such groups as the Committee on Foreign Intelligence, with a charter to control budget preparation and resource allocation community-wide, for the first time provides the necessary strong community management.

16. What is your position on past Agency practices such as assassination plots, mail intercept programs, and drug testing on unsuspecting humans?

The previous management of CIA long ago determined that such practices were unacceptable, and clear instructions prohibiting such activities were issued prior to any outside disclosure of pressure. I support those decisions 100 percent, and will do all within my authority to insure that those programs are never resumed.

18. Why do CIA employees deserve their own separate retirement system?

CIA personnel abroad serve under conditions which in some instances are hazardous to life or health. In recent years with the ever increasing acts of international terrorism, practically any location abroad threatens personal safety. Also, many serve under situations which are specialized due to security requirements and are distinct from normal Government employment. The operational services must be young and vibrant to meet these demands. The Agency recognizes these personal sacrifices and dedication to serve wherever and whenever required by providing incentives for early retirement for those in support of foreign operations.

19. What is your view of the degree to which Congress should oversee intelligence activities?

Congress has far-reaching legislative oversight and appropriations responsibilities under the Constitution. Obviously, appropriate committees of Congress must have knowledge of the Agency's activities so that they can exercise these fundamental responsibilities. I fully recognize this, and I am committed to working with Congress in this regard.

I am not suggesting that it is either necessary or desirable for Congress to concern itself with the details of day-to-day operations. That would go beyond Congress' legislative function, and it would be impossible to run a secret intelligence organization under such circumstances.

I think the American people want strong and effective congressional oversight that imposes clear accountability on the Agency, while at the same time not destroying the Agency's effectiveness.

20. Do you have a view on the current debate in the Senate on the establishment of a new oversight committee?

CIA has always taken the position that it is for the Congress to determine how best to exercise intelligence oversight. Hence, it would not be appropriate for me to endorse or support any particular oversight plan. However, Mr. Bush recently stated, before the Rules Committee, his major concerns regarding oversight. These are that oversight should be concentrated, and not proliferated to several committees, that he opposes an annual authorization requirement, which would inevitably result in budget disclosure, and that the Senate should not disclose information provided by the Executive branch over the President's objection.

21. Do you feel congressional oversight of CIA has been effective?

The effectiveness of congressional oversight is for the Congress itself to judge. It is CIA's firm policy, reflecting our belief that strong oversight is an asset to the Agency, to cooperate fully in every way with our oversight committees.

22. What is your attitude toward furnishing substantive information to Congress?

Congress has an important role in the formulation of our foreign and national defense policies. In order to make decisions on these matters in an informed and reasoned manner, Congress must be kept appraised of intelligence information and assessments. CIA has played an important role in this process. We provide a daily report on foreign developments to the congressional committees directly concerned with our foreign policy and national defense. The Agency provides background intelligence information on specific events to any Member of Congress who requests it and to committees on matters within their jurisdiction. I want CIA to continue to provide this information.

24. Do you feel the CIA should maintain a capability for covert action? How often should it be used? What would be your test for when a covert operation should be undertaken? What role should Congress play in covert action? Do you recommend changes in Section 662 of the Foreign Assistance Act?

I believe that covert actions are sometimes essential to protecting the national security interests of the United States. Although these actions have tapered off in recent years, I think for the foreseeable future they will be necessary from time to time, and certainly, it is important that the nation maintain a capability for this kind of activity. As Mr. Colby has said: The U.S. must have foreign policy options somewhere between hollow diplomatic protests and sending in the Marine Corps. President Ford, the Murphy Commission, and the Church Committee have all concluded that our Government must maintain a covert action capability.

The Executive branch, in my view, must be guided by the national security interests of the United States and has the responsibility for carefully weighing the risks involved in any proposed action against the relative importance of these interests.

Then it is essential that Congress be kept advised of these determinations in a timely fashion through certain designated Members. This is what is done under Section 662 of the Foreign Assistance Act of 1974. I am not sure if the precise arrangements under that Section are entirely desirable for this purpose, however. Its requirement that the President personally certify to the Congress the necessity for all covert actions may be harmful in associating the head of state

so formally with such activities. Moreover, Section 662 requires that covert actions be reported to six committees of Congress, a total of 55 Members. This may be more than is necessary and perhaps this procedure could be consolidated. Some of these suggestions have already been made by the Murphy Commission which recommended that Section 662 be amended to require reporting of covert actions to a Joint Committee on National Security, and to omit any requirement for the personal certification of the President as to their necessity.

25. Do you feel CIA classifies more information than needs to be classified? If so, what can be done to reduce the amount of information classified?

We recognize that there has been overclassification in Government and that overclassification does exist in CIA. In recent years the Executive has recognized that the public must be informed on certain matters of national importance. The issue has been a proper balance to assure that the public is informed and that national security is not endangered. The Agency is carefully reviewing its programs to identify those activities which require continued protection and those areas where a broader disclosure will not be harmful. With the issuance of Executive Order 11652 regarding classification and declassification, the Agency has been able to reduce by 50 percent the number of materials classified. We will periodically assess our classification procedures and strive toward the maximum dissemination possible consistent with national security.

26. Do you feel intelligence budget totals need to remain secret?

Yes. The disclosures of intelligence budgets would provide adversaries with significant insight into the nature, direction, and scope of our foreign intelligence programs, particularly when year-to-year fluctuations are significant. Budget totals, when correlated with other available information will enable our adversaries to arrive at more accurate conclusions about major intelligence community programs. This would aid our adversaries in thwarting our efforts to collect important information. In addition, once overall intelligence budget figures are made public, it will be impossible to prevent the disclosure of budget details. Definitional questions over where "intelligence" expenditures stop and operational expenditures begin would lead to open discussion of sensitive intelligence programs and techniques.

The constitutionality of budget secrecy has been attacked, in light of a constitutional clause requiring a statement of receipts and expenditures to be published from time to time. No court has found the present system to be unconstitutional, and I believe it to be perfectly valid. Logic and numerous historical precedents indicate that some budget secrecy is permissible. I believe it is within Congress' discretion to publish a single defense figure, which includes closely related intelligence costs, without releasing a separate intelligence figure.

27. Should Government classification of information be governed by statute or Executive order? Why?

The essential point is that whatever classification system is adopted must afford sufficient protection for sensitive information. Under the National Security Act of 1947, the Director of Central Intelligence is made responsible for the protection of intelligence sources and methods. The continued success of our foreign collection programs rests on this protection. Executive orders and court decisions concerning secrecy have recognized this statutory responsibility and have granted the Agency a degree of latitude and flexibility to mold its security programs to assure the protection of intelligence sources and methods. Any statutory classification program must grant an equal degree of protection, and must be administratively workable.

28. Are CIA personnel overseas adequately protected? If not, what can be done by the Executive branch to improve this situation? Do you support bills which have been introduced to provide criminal penalties for disclosure of information leading to the identification of CIA employees under cover?

I think it is important that the country protect the dedicated men and women it sends overseas to engage in foreign intelligence activities. If these people are to be effective, they usually must not be openly identified as intelligence personnel. I think there is much that both the Congress and the Executive branch can do to improve the "cover" arrangements made for these people. For example, Congress might consider providing explicit statutory authority for the Director to make adequate "cover" arrangements.

The exposure of individuals involved in the foreign intelligence operations of the United States can seriously jeopardize their personal safety and the safety of their families and associates. Although the nation has already witnessed tragedy in this respect, groups and

individuals within the United States, whose avowed purpose is to destroy the nation's foreign intelligence capability, are still attempting to discover and publish the identities of intelligence personnel. In my view, existing law is almost completely inadequate in deterring this kind of malicious act. I strongly support legislation that will strengthen existing law in this respect. Senator Beall has introduced such legislation in the Senate--S. 3242. This proposal would make it a crime to knowingly and willfully identify clandestine intelligence personnel under certain circumstances.

29. Are better laws necessary to protect intelligence secrets?

In my view, current law is almost completely inadequate in protecting against the unauthorized disclosure of intelligence sources and methods.

As you know, the National Security Act places a responsibility on the DCI to protect intelligence sources and methods. However, no legal sanctions are provided for him to implement this responsibility. Over the years, serious damage to our foreign intelligence effort has resulted from unauthorized disclosures of intelligence sources and methods. In many cases, the sources of these leaks have been individuals who acquired access to sensitive information by virtue of a special relationship of trust with the U.S. Government. Existing law does not cover situations where a deliberate breach of this relationship of trust occurs. In his 18 February message, the President proposed legislation which would strengthen existing law in this respect. I strongly support this legislation.

The proposed legislation recognizes the authority of the Director of Central Intelligence, and the heads of other agencies expressly authorized by law or by the President to engage in foreign intelligence activities for the United States, to designate certain information as relating to intelligence sources and methods and provides a criminal penalty for the disclosure of such information to unauthorized persons. It is limited to individuals who gain access to sensitive information by virtue of their position as officer, employee, contractor, or other special relationship with the United States Government.

30. Do you see any danger that the abuses by CIA in the past might be repeated? What can be done to insure that the efforts of CIA are never again directed at U.S. citizens?

Frankly, I do not think there is much of a danger of past abuses being repeated. Agency personnel are fully aware of the proper limits on domestic activities and have been directed to report any abuses that come to their attention.

After all, it was the Agency which discovered and promptly remedied its own abuses. In addition, new internal and external oversight mechanisms have been created by E. O. 11905. The role of the IG and the General Counsel have been expanded within the Agency. A civilian oversight board has been established outside the Agency. Also E. O. 11905 has eliminated many of the "gray areas" by spelling out restrictions on intelligence activities.

There is no question that vigorous oversight and supervision are essential, but I think we must also recognize that there is a real danger of smothering initiative and incentive. I think a delicate balance has to be struck, and it will be my job to see that it is.

31. Do you know of any examples where intelligence estimates were tailored or slanted so that they supported particular policy options? Would you say that it is essential that this never be permitted to happen? What has been and can be done to insure that it is not?

I know of no examples where intelligence estimates were slanted so as to support particular policy options. Objectivity must be the hallmark of intelligence, or intelligence is worthless. Objectivity can be insured by stressing its importance to our intelligence collectors and analysts, and through their integrity and dedication to their profession. Before being published, intelligence documents are reviewed by other analysts as well as supervisory personnel, and often by analysts of other agencies. This process of coordination and review further insures objectivity.

32. What would you do if higher authorities insisted that you order the Agency to undertake an improper act?

I am quite confident that days of improper requests to CIA are behind us. Previous improper requests created such a furor that I do not believe we will see any more. However, if asked to order CIA to do an improper act, I would first point out to the requester that the request was improper, and how it was so. I would attempt to obtain a retraction of the order and, if unsuccessful, would refuse to follow it. If it came down to carrying out the order or resigning, I would resign.

33. What is the state of CIA morale?

I am amazed that the morale of CIA employees has remained as high as it has. CIA has been subjected to an incredible buffeting, both from the investigations and from the media, and still CIA has been able to accomplish its tasks in a professional manner. Certainly there are problems which adversely affect morale--such as the lack of adequate protection for the information which our officers risk their lives to obtain. But overall, morale has remained pretty good.

SECRET

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Mr. Knoche

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Hank:

Here are proposed responses to questions which may come up during your confirmation hearings, except on those questions in the personal category.

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George L. Cary
Legislative Counsel

RECEIVED DIRECTOR OF THE FBI DD-21/100